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[H.R. 677, American Heroes COLA Act of 2015, as amended](#)

FLOOR SITUATION

On Tuesday, February 9, 2016, the House will consider [H.R. 677](#), the American Heroes COLA Act of 2015, as amended, under suspension of the rules. H.R. 677 was introduced on February 3, 2015 by Rep. Ralph Abraham (R-LA), and was referred to the Committee on Veterans' Affairs, which ordered the bill reported, as amended, by voice vote on September 17, 2015.

SUMMARY

H.R. 677 provides for an automatic annual increase in rates of veterans' benefits, improves the expedient and accurate processing of benefits claims and appeals, ensures appropriate availability of benefits and headstone adornments, increases availability of medical evidence for benefits cases, extends through 2021 the program to provide reintegration and readjustment services in group retreat settings to women veterans who are recently separated from service after a prolonged deployment, as well as bestow honors and make other crucial changes as it pertains to veterans' status designations. Provisions from the following bills are incorporated: [H.R. 245](#) (Abraham), [H.R. 800](#) (O'Rourke), [H.R. 1288](#) (Butterfield), [H.R. 1302](#) (Latta), [H.R. 1331](#) (Walz), [H.R. 1380](#) (Miller), [H.R. 1512](#) (Rouzer), [H.R. 2214](#) (Abraham), [H.R. 2286](#) (Cook), [H.R. 2605](#) (Johnson), [H.R. 2691](#) (Ruiz), [H.Con.Res 53](#) (Frankel), and [H.R. 1575](#) (Brown). Major provisions of the bill include:

Section 2 – Expansion of eligibility for medallions

Allows the Secretary to furnish a headstone or marker to signify a deceased individual's status as a veteran who served in the Armed Forces on or after April 6, 1917.

Section 3 – Definitions relating to claims

This section establishes uniform definitions for the terms "claimant," "claim," and "formal claim."

Section 4 – Quarterly reports on formal and informal claims

Requires the VA to submit quarterly reports that include the following information: the total number of claims submitted; the total number of informal and formal claims submitted; the total number of forms indicating intent to file a claim; the total number of claims notification letters sent; the total number of electronically filed claims submitted; and the total number of fully-developed claims submitted.

In addition, this section establishes a Sense of Congress that the VA should develop a form for an increased rating claim or reopening of a claim that does not require the resubmittal of information previously submitted on a formal claim form.

Section 5 – Expedited payment of survivors benefits

Authorizes the VA to automatically pay benefits to qualified survivors upon receipt of a death certificate or other evidence. This section also requires a report on survivors' claims that have been adjudicated.

Section 6 – Priority for processing claims of the Department of Veterans Affairs

Requires the Secretary to prioritize disability benefits claims for veterans who have attained the age of 70; are terminally ill; have life-threatening illnesses; are homeless; have received the Medal of Honor; were prisoners of war; have claims being reviewed again in relation to a previously denied claim relating to military sexual trauma, are seriously or very seriously injured (as determined by the Secretary), and the Secretary determines a good cause justifies prioritization.

Section 7 – Treatment of medical evidence by non-department of Veterans Affairs medical professionals in support of claims for disability insurance

Requires the VA to accept a medical examination administered by a private physician if such examination report is sufficiently complete for new claimants. This section defines sufficiently complete to mean "competent, credible, probative, and containing such information as may be required to make a decision on the claim from which the report is provided." In addition, the VA shall submit a report three years after enactment of this legislation that includes the number of veterans who submitted a medical opinion or report of a medical examination by a private physician, the number of reports of a medical examination administered by a private physician that were determined to be insufficient, and a comparison of the approval rates of claims of veterans who submitted a report by a private physician, veterans whose reports were found to be insufficient by the Secretary, and veterans who did not submit reports. This report will be done annually, for three years.

Section 8 – Automatic annual increase in rates of disability compensation and dependency and indemnity compensation

Makes compensation to veterans and their dependents subject to the same cost-of-living adjustments (COLA) as Social Security recipients. The bill also requires that increases in payments based upon COLA adjustments would be rounded down to the next lower whole dollar. However, the round down provision would sunset on December 1, 2025.¹

Section 9 – Improvement of fiduciaries for veterans

Reforms the VA's fiduciary program by: requiring the Secretary to provide a written statement detailing the reasons why a fiduciary is necessary; allowing veterans to remain out of the fiduciary program if medical evidence supports such a position; allowing a veteran who has sufficiently recovered at a later time to return to managing his or her own financial affairs; permitting a veteran to request the appointment of a new fiduciary if the current appointment is not acting in the best interest of the veteran; enabling a veteran to designate a preferred fiduciary ahead of time; setting the commission rate paid to fiduciaries to not more than \$35 or 3% of the veteran's monthly benefits, whichever is less; improving the oversight and qualification processes for fiduciaries by requiring the

¹ To compensate for the effects of inflation, the Social Security Administration issues annual cost-of-living adjustments (COLA) to recipients. COLAs are based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), updated monthly by the Department of Labor's Bureau of Labor Statistics. The COLA is based on the growth in the index from the highest third calendar quarter average CPI-W recorded (most often, from the previous year) to the average CPI-W for the third calendar quarter of the current year. Since inflation did not increase from 2014 to 2015 according to parameters outlined in the Social Security Act, no COLA will be payable in 2016. (CRS Report [Social Security: Cost-of-Living Adjustments](#) October 20, 2015 at 2)

Secretary to perform civil and criminal background investigations and face-to-face interviews; requiring an annual accounting by fiduciaries of benefits disbursed; and giving the VA the opportunity to audit fiduciaries whose accounting is suspect.

Section 10 – Board of Veterans’ Appeals video hearings

Permits the Board of Veterans’ Appeals to schedule the earliest possible hearing for an appellant, which may be videoconferencing, a hearing at Board offices in Washington, D.C., or a hearing by a Board Member held in a local regional office. In addition, Section 10 encourages the additional use of videoconference for the purposes of scheduling appeals hearings.

Section 11 – Improvements to authority for performance of medical disabilities examinations by contract physicians

Extends the VA’s authority to contract with non-VA physicians to conduct disability examinations through December 31, 2017. In addition, Section 11 clarifies that a physician who has a current unrestricted license would be authorized to conduct disability examinations for the VA in any state, the District of Columbia, or a commonwealth, territory, or possession of the United States.

Section 12 – Pilot program on fully developed appeals

Establishes a five-year fully developed appeals (FDA) process to help expedite the VA’s processes. This section requires the VA to tell the claimant about the pilot program and work with veterans service organizations to publish online tutorials explaining the advantages and disadvantages of the pilot program. Veterans are allowed to revert to the traditional appeals process at any time, without penalty. In addition, Section 12 requires the Board to establish an office to develop any evidence to aid in FDA determination, and directs the Board to take any necessary action to develop such new evidence without remanding the case to the Veterans Board of Appeals. Finally, this section requires the VA to produce an annual report that would include recommendations for improvements to the pilot programs.

Section 13 – Deadline for certification of appeals forms by regional offices of the Department of Veterans Affairs

Requires the VA to complete the certification of appeals process within one year.

Section 14 – Evaluation of backlog of disability claims and appeals of claims of Department of Veterans Affairs

Establishes a commission or task force to provide a comprehensive evaluation and assessment of the backlog of VA disability claims, the backlog of appeals of initial decisions, an analysis of possible improvements to disability claims processing, and any related issues that the commission or task force considers relevant.

Section 15 – Methods for validating certain World War II Merchant Mariner service considered to be active by the Secretary of Veterans Affairs

Expands the list of official documents accepted by the Secretary of Defense to grant veterans status with limited benefits to World War II merchant marine and coastwise merchant seamen. Acceptable forms of documentation may now include Social Security Administration records, validated testimony by the applicant or closest living relative, and other official records.

Section 16 – Designation of American World War II Cities

Mandates that the VA Secretary designate one city in the United States each year as an “American World War II City” based on a set of criteria that includes contributions to the war efforts, efforts to preserve the history of the city’s contributions, and the presence of military facilities.

Section 17 – Sense of Congress Regarding American Veterans Disabled for Life

Expresses the sense of Congress that our nation honors the service and sacrifice made by the men and women left permanently wounded, ill, or injured as a result of their service in the Armed Forces.

Section 18 – Extension of Pilot Program on Counseling in Retreat Settings for Women Veterans Newly Separated from Service

Require the Department of Veterans' Affairs to extend a pilot program that provides counseling in group retreat settings to certain women veterans who have recently separated from military service until 2021.

BACKGROUND

Section 2 – Expansion of eligibility for medallions

Under current law, the Department of Veterans Affairs (VA) may provide a medallion that signifies an individual's status as a veteran to be attached to a privately purchased headstone or marker for veterans who died on or after November 1, 1990. This medallion is currently only available to veterans who died after October 31, 1990, in because from November 1, 1990 through September 11, 2001, the VA did not pay for a private headstone or marker for veterans who were qualified for interment in a national or state veterans' cemetery.²

Section 3 – Definitions relating to claims

Establishing uniform definitions would ensure consistency in the types of information included in reports to Congress.³

Section 4 – Quarterly reports on formal and informal claims

This information will improve congressional oversight of the VA.⁴

Section 5 – Expedited payment of survivors benefits

The VA provides several benefits to qualifying members of certain deceased veterans, including Dependency and Indemnity Compensation, survivors' pension, home loans, and the Dependents' Educational Assistance Program. In most cases, the VA's records already include many of the documents necessary to grant benefits to his or her survivors, such as the veteran's DD-214. However, to qualify for benefits, the survivor is required to file a formal claim and resubmit evidence that the VA already has, such as the veteran's service-connected disability ratings.⁵

Section 6 – Priority for processing claims of the Department of Veterans Affairs

Current VA practice allows for the prioritization of certain claims, including Medal of Honor recipients, homeless veterans, veterans experiencing extreme financial hardship, and veterans suffering from terminal illnesses. However, recent oversight by the Committee on Veterans' Affairs has concluded that it is not guaranteed that this VA practice is uniformly applied across all regional offices.⁶

Section 7 – Treatment of medical evidence by non-department of Veterans Affairs medical professionals in support of claims for disability insurance

The VA schedules medical examinations to veterans seeking disability benefits, but oftentimes there is a long wait before examinations can be scheduled. In addition, many veterans prefer to submit private medical evidence to support their claims for disability benefits. The Veterans' Affairs

² See [House Report 114-405](#) at 21-22.

³ *Id*

⁴ *Id*

⁵ See [House Report 114-405](#) at 23.

⁶ See [Testimony of Thomas Murphy](#), Director, Compensation Service U.S. Department of Veterans Affairs at "Legislative Hearing on H.R. 1288, H.R. 1494, H.R. 1623, H.R. 1809, H.R. 2086, H.R. 2138, H.R. 2189, H.R. 2341, H.R. 2382, and H.R. 2423," June 28, 2013, at 26.

Committee Subcommittee on Disability Assistance and Memorial Affairs concluded at a hearing earlier this Congress that the VA unnecessarily schedules duplicative examinations with a VA physician, despite there being sufficient medical evidence in the claims file from a private physician to process the claim.⁷

Section 8 – Automatic annual increase in rates of disability compensation and dependency and indemnity compensation

The Department of Veterans Affairs (VA) provides a range of benefits for disabled veterans. Veteran disability compensation programs provide relief from the impaired earning capacity of disabled as the result of their military service, and vary according to the degree of the disability.⁸ Each year, the Committee approves and reports legislation that sets the cost-of-living adjustment (COLA) by reference to the Social Security increase. Although the Committee typically passes such legislation each year, veterans must wait for Congress to act before they are granted such an increase. In contrast, Social Security beneficiaries receive an automatic and annual COLA if there is an increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) in the previous year.⁹

Section 9 – Improvement of fiduciaries for veterans

Current law provides authority for the VA fiduciary program, which is intended to help veterans and other VA beneficiaries who are deemed by the Secretary of Veterans Affairs to be mentally incompetent for purposes of handling their financial affairs. In such cases, the Secretary appoints a fiduciary who, by statute, is only authorized to receive and manage benefits administered by the Secretary on behalf of the beneficiary. The fiduciary is responsible for ensuring that a beneficiary's bills are paid on time and that a beneficiary receives money to pay for food, shelter, clothing, medical expenses, and other necessities.¹⁰

Section 10 – Board of Veterans' Appeals video hearings

Although a hearing is not required in order for the Board of Veterans' Appeals (Board) to issue a final decision in a veteran's appeal, a veteran is entitled to a hearing upon request. In FY 2014, the Board held almost 11,000 hearings.¹¹ Many of these hearings were conducted at the Board offices, but Board Members also travel to VA regional benefits offices around the country for the purpose of holding hearings in locations more convenient for veterans. In addition, the Board offers veterans the option of having a videoconference hearing.

Section 11 – Improvements to authority for performance of medical disabilities examinations by contract physicians

Certain veterans are afforded a medical examination to evaluate their application for disability benefits. Currently, there are not enough VA examiners to perform such evaluations in a timely manner. Delays oftentimes occur, especially when a veteran needs to see a specialist. The VA has stated that enabling licensed physicians operating under a VA contract to conduct more examinations would allow VA doctors to devote more time to treating veterans, rather than conducting disability examinations.¹²

⁷ See [Testimony of Zachary Hearn](#), Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion at “Legislative Hearing on H.R. 675, H.R. 677, H.R. 732, H.R.800, H.R. 1067, H.R. 1331, H.R. 1379, H.R. 1414, H.E. 1569, and H.R. 1607,” April 14, 2015.

⁸ See [CRS Report “Veterans’ Benefits: Disabled Veterans”](#) January 10, 2013 at 2.

⁹ See [House Report 114-405](#) at 25.

¹⁰ See [House Report 114-405](#) at 26-27.

¹¹ See [House Report 114-405](#) at 30.

¹² See [CRS Report “Veterans’ Benefits: The Department of Veterans Affairs and the Duty to Assist Claimants”](#) September 26, 2014 at 8.

Section 12 – Pilot program on fully developed appeals

Under the current VA appeals system, a veteran who disagrees with VA's decision with respect to his or her claim for benefits may file a Notice of Disagreement (NOD). The VA regional benefits office then determines whether additional development is needed and, if so, undertakes that development and provides the veteran with a statement of the case (SOC). The SOC includes a summary of the evidence considered, a summary of the applicable laws and regulations, and a discussion of how such laws and regulations affect the VA's decision. The veteran may then file a substantive appeal via a VA Form 9, and is permitted to submit additional evidence to support his or her appeal. Each time the veteran submits new information, the regional benefits office will generally issue a new decision or supplemental statement of the case (SSOC).

The requirement that the VA issue a SSOC every time new evidence is submitted increases the wait time for veterans. In FY 2014, the average time between the date a veteran filed an NOD and the issuance of an SOC was 330 days. The time from issuance of an SOC to filing of a substantive appeal averaged 39 days. The period between the filing of a substantive appeal and certification of an appeal to the Board was 681 days.¹³

Section 13 – Deadline for certification of appeals forms by regional offices of the Department of Veterans Affairs

After a veteran files a substantive appeal, VA employees are required to review the claims file to ensure that all administrative and adjudicative procedures have been completed before the appeal is certified to the Board. The purpose of the review is to avoid unnecessary remands by ensuring that all issues have been addressed before certification to the Board.¹⁴ Despite the fact that this review is simply an administrative procedure, it currently takes 681 days on average for VA to complete the process of certifying an appeal to the Board.¹⁵

Section 14 – Evaluation of backlog of disability claims and appeals of claims of Department of Veterans Affairs

The VA disability compensation program provides monetary support to veterans with disabling conditions that were incurred or aggravated during military service. In FY 2015, the program provided approximately \$63.7 billion in disability compensation benefits to nearly 4.1 million veterans. In December 2012, the GAO issued a report entitled, 'Veterans' Disability Benefits: Challenges to Timely Processing Remains a Daunting Challenge' that reviewed VA's disability adjudication process. The GAO noted that, although the VA is attempting to address processing challenges through various improvement initiatives, without a comprehensive plan to strategically manage resources and evaluate the effectiveness of these efforts, the agency risks spending limited resources on initiatives that may not speed up the disability claims and appeals processes.¹⁶

Section 15 – Methods for validating certain World War II Merchant Mariner service considered to be active by the Secretary of Veterans Affairs

Historically, merchant mariners were private citizens employed by freight shipping companies. In an effort to support the American war effort during World War II, these freight shipping companies and their employees became an auxiliary to the United States Navy. Their mission was to transport bulk war materials including food, clothing, weapons, and even troops to all areas of conflict and coastal installations here at home. Currently, a certificate of shipping and discharge forms, continuous deck or engine logbooks, and shipping company records that indicate the vessel names and dates of voyages are the only documents that are considered acceptable to determine an individual's service

¹³ See [House Report 114-405](#) at 33.

¹⁴ See [CRS Report "Overview of the Appeal Process for Veterans' Claims"](#) May 20, 2014 at 2.

¹⁵ See [House Report 114-405](#) at 34.

¹⁶ *Id.*

in the merchant marine. Unfortunately, such documentation may no longer exist or can be difficult to find.¹⁷

Section 16 – Designation of American World War II Cities

The Committee believes that American cities provided critical and distinguished contributions to the World War II effort and should be honored and celebrated accordingly.¹⁸

Section 17 – Sense of Congress Regarding American Veterans Disabled for Life

There are 3.6 million veterans of the United States Armed Forces living today that are recognized by the VA to be service-disabled veterans.¹⁹

Section 18 – Extension of Pilot Program on Counseling in Retreat Settings for Women Veterans Newly Separated from Service

The Caregivers and Veterans Omnibus Health Services Act of 2010 ([P.L. 111-163](#)) required the VA to create a pilot program to evaluate the feasibility and advisability of providing reintegration and readjustment services in group retreat settings to women veterans who were recently deployed. The pilot program ran for two years with 134 women participating in them. The majority of these women displayed improvements in their psychological well-being, a reduction in their PTSD symptoms and improved stress coping skills.²⁰ There are more than 2 million American women veterans, which represents 9.2 percent of the veteran population. By 2020, women are expected to comprise 10.5 percent of the total veteran population. While women veterans experience readjustment issues similar to their male counterparts, such as post-traumatic stress disorder (PTSD), substance abuse, and homelessness, research has shown that military service may affect women differently than men.

COST

The Congressional Budget Office preliminary tables estimate that if the anticipated Manager's Amendment is adopted, and if H.R. 677, as amended, were enacted, that it would have no impact on direct spending in the first year, decrease direct spending by \$263 million over five years, and decrease direct spending by \$957 million over ten years. Enacting H.R. 677, as amended, would not impact discretionary spending in the first year, but would increase discretionary spending by \$136 million over five years.

STAFF CONTACT

For questions or further information please contact [Jake Vreeburg](#) with the House Republican Policy Committee by email or at 5-0190.

¹⁷ See [CRS Report “Veterans’ Benefits: Eligibility of Merchant Mariners”](#) August 26, 2015 at 4.

¹⁸ See [House Report 114-405](#) at 36.

¹⁹ *Id.*

²⁰ See [House Report 114-319](#)